

Attorneys for Plaintiffs Martha Zepeda Olivares, individually and on behalf of the Estate of Maximiliano Sosa, Jr. and Maximiliano Sosa, Sr.

MARTHA ZEPEDA OLIVARES,  
individually and on behalf of the ESTATE OF  
MAXIMILIANO SOSA, JR.;  
MAXIMILIANO SOSA, SR.,

Plaintiffs,

v.

CITY OF FRESNO; UNKNOWN LAW  
ENFORCEMENT OFFICERS, and DOES 1-  
30

Defendants.

CASE NO. 1:23-cv-01575-JLT-SAB

**PLAINTIFFS' RESPONSE TO THE  
OBJECTIONS OF MARIA SOSA TO  
THE COURT'S MODIFIED ORDER RE:  
EMERGENCY EX PARTE  
APPLICATION FOR ORDER  
ALLOWING PRIVATE AUTOPSY  
PRIOR TO EMBALMING OR  
FUNERAL; SUPPORTING  
DECLARATIONS OF COUNSEL AND  
SELISSA SOSA; EXHIBITS**

Plaintiffs Martha Zepeda Olivares, individually and on behalf of the Estate of Maximiliano Sosa, Jr. and Maximiliano Sosa, Sr., through their counsel of record, hereby respond to the objections filed by and on behalf of Maria Sosa (Doc. Nos. 11, 12) to this Court's November 8, 2023 Order on plaintiffs' *ex parte* application (Doc. No. 6), which conditionally authorized a private autopsy prior to the corpse of the decedent's being embalmed and prior to his funeral being held. For the reasons detailed herein, Ms. Sosa's objections are lacking in merit and based on inaccuracies and should be overruled.

Specifically, plaintiffs respond to the asseverations in Ms. Sosa's nearly identical two objections as follows:

1           1.       The date of Ms. Sosa’s marriage to the decedent is undisputed. Objections, ¶ 1.  
2 It is also undisputed that Ms. Sosa and the decedent have two minor children, ages 4 and 2.  
3 Objections, ¶ 2. It is further undisputed that Ms. Sosa has had legal and physical custody of her  
4 two children, *see* Objections ¶ 4, although custody had been shared with the decedent since their  
5 February 2023 separation. *See* Declaration of Selisa Sosa, ¶ 2.

6           2.       The specific factual circumstances described in paragraphs 4 through 8 of Ms.  
7 Sosa’s objections are unknown to plaintiffs, who were not present when the decedent was shot  
8 and killed by Fresno Police officers, but the description provided by Ms. Sosa is generally  
9 consistent with the allegations of the plaintiffs’ Complaint and therefore is not disputed for  
10 present purposes.

11           3.       Plaintiffs have no knowledge of Ms. Sosa’s representation in paragraph 9  
12 regarding her attorney representation. Furthermore, plaintiffs agree that Ms. Sosa has legal  
13 standing to represent the interests of her two minor children, unless a guardian *ad litem* is  
14 appointed pursuant to FRCP 17 and California Code of Civil Procedure § 372.

15           4.       However, plaintiffs dispute Ms. Sosa’s self-description in paragraph 9 as the  
16 successor-in-interest to the decedent’s estate. As the attached declaration of Selise Ramos, the  
17 decedent’s sister, sets forth, Ms. Sosa and the decedent had been separated since February 2023,  
18 when Ms. Sosa left the marital home. The decedent also expressed an intention to remain  
19 separate from Ms. Sosa and to live his life as a single individual. *See* Declaration of Selisa  
20 Sosa, ¶¶ 3-4. It is therefore doubtful that Ms. Sosa is the decedent’s successor in interest. A  
21 “surviving spouse” does not include a “legally separated” spouse, and “legally separated”  
22 includes spouses who evince an intent to end their marriage. *See* Cal. Probate Code §§ 78,  
23 6401, 6402 (limiting intestate heirs to a “surviving spouses,” which do not include “legally  
24 separated” spouses); Cal. Family Code § 70 (defining “legally separated” as a spouse who,  
25 subjectively and objectively, evinces even a unilateral intent to end his marriage). Moreover,  
26 the decedent’s two very young children are clearly incompetent to serve as his successor in  
27 interest until or unless a guardian *ad litem* is appointed. *See* FRCP 17(c)(2); Cal. Code of Civil  
28 Procedure § 372. It also appears that Ms. Sosa may have a conflict of interest and cannot be the

1 children's guardian *ad litem* since she has an incentive to declare herself as an heir even if she is  
2 not, to the detriment of her children's estate interests. *See Williams v. Superior Court* (2007)  
3 147 Cal.App.4th 36, 48-49 (2007).

4         5.       At this point, the Court is not required to resolve these estate disputes, many of  
5 which likely will have to be litigated in a probate proceeding. Plaintiffs only note that the  
6 decedent's estate representation is in dispute. Moreover, regardless of the outcome of the  
7 dispute regarding the decedent's estate representation, plaintiffs still have standing as the  
8 decedent's parents to assert claims under the Fourteenth Amendment under 42 U.S.C. § 1983.  
9 "Parents have a Fourteenth Amendment liberty interest in the companionship and society of  
10 their children." *Zion v. Cnty. of Orange*, 874 F.3d 1072, 1076-1077 (9th Cir. 2017) (*quoting*  
11 *Wilkinson v. Torres*, 610 F.3d 546, 554 (9th Cir. 2010)).

12         6.       The statements in paragraphs 10 and 11 of Ms. Sosa's objection either do not  
13 require a response or are unknown to plaintiffs.

14         7.       Plaintiffs do not dispute the representation in paragraph 12 of Ms. Sosa's  
15 objection that neither party had filed a petition for divorce or separation. However, for the  
16 reasons set forth above, "legal separation" may be accomplished by means other than a  
17 judgment of separation or divorce.

18         8.       Plaintiffs do not dispute the accuracy of the death certificate attached to Ms.  
19 Sosa's objection for present purposes. Objections, ¶ 13.

20         9.       Ms. Sosa's invocation of Health and Safety Code § 7100 on pages 3 and 4 of her  
21 objections once again assumes that she is legally entitled to hold herself out as the "surviving  
22 spouse" despite the legal issues and factual disputes identified above. Again, this need not be  
23 resolved by the Court at this early stage. Plaintiffs nonetheless have a right to assert their own  
24 legal claims, and they have standing to ask the Court for permission to perform a private  
25 autopsy in connection therewith.

26         10.       Ms. Sosa also contends on page 5 of her objections that a private autopsy is  
27 unwarranted, presumably because the decedent's death certificate states that he died as a result  
28 of a law enforcement shooting. However, excessive deadly force cases frequently turn on

1 forensic evidence as to *how* specifically the decedent was killed, not merely the cause of his  
2 death. *See Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994) (“We recognize that, this being a  
3 case involving deadly force, we must ensure that the officers are ‘not taking advantage of the  
4 fact that the witness most likely to contradict [their] story - the person shot dead - is unable to  
5 testify.” and “The judge must carefully examine all the evidence in the record, such as medical  
6 reports, contemporaneous statements by the officer and the available physical evidence, as well  
7 as any expert testimony proffered by the plaintiff, to determine whether the officer's story is  
8 internally consistent and consistent with other known facts.”). The *conclusions* of a death  
9 certificate fail to prove the *circumstances* of the decedent’s death, which are currently unknown  
10 to plaintiffs, and they should be entitled to perform an investigation to support their claims. For  
11 reasons already stated, the passage of undue time, the decedent’s embalment, or, obviously,  
12 his burial, could effectively prevent the plaintiffs’ from obtaining crucial evidence.

13         11.       On page 5 of her objections, Ms. Sosa also complains that many logistical  
14 aspects of the private autopsy are unknown, such as (a) the date when the decedent’s body will  
15 be picked up, (b) who would be performing the autopsy, (c) where the autopsy is to be  
16 performed, (d) the scope of the autopsy, (e) the financial details of the autopsy, and (f) when the  
17 decedent would be returned to the funeral home. Plaintiffs respond as follows: (a) a pick-up  
18 date cannot be set until the present objections are resolved; (b) the identity of who the plaintiffs  
19 select to perform the autopsy should not be Ms. Sosa’s concern, but the plaintiffs have selected  
20 Dr. Allecia Wilson, a nationally recognized forensic pathologist who heads the University of  
21 Michigan’s Autopsy and Forensic Services Program; (c) the autopsy will be performed in Dr.  
22 Wilson’s Michigan facility within the time and other parameters set forth in the Court’s Order;  
23 (d) the scope of the autopsy will be within the professional discretion of Dr. Wilson, and within  
24 the parameters of the Court’s Order; (e) as set forth in the Court’s Order, no other party will be  
25 financially responsible for any costs attendant to the private autopsy; and (f) the decedent would  
26 be returned to the funeral home within 72 hours of his pick-up, as required by the Court’s Order.  
27 *See Declaration of Kevin G. Little.*

28         12.       Finally, Ms. Sosa states on page 6 of her objections that the private autopsy will

1 interfere with the current scheduling of the decedent's funeral and burial, and that plaintiffs  
2 have not offered to assist in the payment of any related expenses that might be incurred as a  
3 result of any delay. However, plaintiffs are informed and believe that the decedent's funeral is  
4 currently scheduled for November 22, 2023, and that any delay beyond that date would be due  
5 to the litigation of Ms. Sosa's objections, not the private autopsy process. Finally, contrary to  
6 Ms. Sosa's statement, plaintiffs have indeed offered to assist in the funeral expenses. *See*  
7 Declaration of Selisa Sosa, ¶¶ 5-6.

8 WHEREFORE for all the above reasons and those set forth in their ex parte application,  
9 plaintiffs request an order permitting them to have a private autopsy done prior to any  
10 embalming of the defendant's corpse and prior to any funeral being held.

11 Dated: November 13, 2023

/s/ Kevin G. Little

Kevin G. Little

Attorneys for Plaintiffs Martha Zepeda Olivares,  
12 individually and on behalf of the Estate of  
13 Maximiliano Sosa, Jr. and Maximiliano Sosa, Sr.  
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1. I am the lead attorney of record for the plaintiffs in this newly filed action. I was contacted by plaintiffs the same day that the decedent, Maximiliano Sosa, Jr. was shot and killed by Fresno Police Officers.

2. Ms. Sosa has expressed several logistical concerns, to which I can respond as follows: (a) a pick-up date cannot be set until the present objections are resolved; (b) the identity of who the plaintiffs select to perform the autopsy should not be Ms. Sosa's concern, but the plaintiffs have selected Dr. Allecia Wilson, a nationally recognized forensic pathologist who heads the University of Michigan's Autopsy and Forensic Services Program; (c) the autopsy will be performed in Dr. Wilson's Michigan facility within the time and other parameters set forth in the Court's Order; (d) the scope of the autopsy will be within the professional discretion of Dr. Wilson, and within the parameters of the Court's Order; (e) as set forth in the Court's Order, no other party will be financially responsible for any costs attendant to the private autopsy; and (f) the decedent would be returned to the funeral home within 72 hours of his pick-up, as required by the Court's Order.

3. If called to testify, I could truthfully and competently testify to the foregoing

Sworn under the laws of the United States of America, this 13<sup>th</sup> day of November, 2023

in Fresno, California.

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The undersigned, Selise Sosa, hereby declares as follows:

1. I am an adult resident of the County of Fresno. I am the surviving oldest sister of the decedent, Maximiliano Sosa, Jr.

2. After they split up and began living separately in February 2023, my brother and Ms. Sosa alternated weeks of physical custody with respect to their two young children. I know this because I was present on many occasions when the two children were with my brother, who remained in what had been the family residence, 5552 West Oak Ave, Fresno CA 93722.

3. Ms. Sosa and my brother had been separated since February 2023, when Ms. Sosa left the marital home. My brother also expressed an intention to remain separate from Ms. Sosa and to live his life as a single individual.

4. Prior to his death, my brother developing a relationship with another woman, and they even had discussed the possibility of having children of their own. I know this because I am familiar with my brother's post-separation romantic interest and have been shown text messages they exchanged.

5. In text communications that I had with Ms. Sosa in relation to the funeral, she indicated that it was tentatively scheduled for November 22, 2023. I attach text messages to prove this.

6. My family has always been willing to assist with the expenses of the funeral, but we have been largely left out of the planning process, which has been heartbreaking to us. I attach text messages to prove our willingness to assist with the funeral expenses.

7. If called to testify, I could truthfully and competently testify to the foregoing

Sworn under the laws of the United States of America, this 13<sup>th</sup> day of November, 2023,  
in Fresno, California.

/s/ Selise Sosa



Maria &gt;



you if we could go see them for a bit and give them to them.

Wednesday 9:47 AM

Yes of course. I'll be at my parents later you guys can go by just let me know when.

Ok. Can you send me the set times for the rosary and mass please. Family is asking

#### Services

Visitation: Tuesday, November 21, 2023, 4-7PM @ Wallin's Sanger Funeral Home

Rosary: Tuesday, November 21, 2023 @

6:00PM at Wallin's Sanger Funeral Home

Mass: Wednesday, November 22, 2023, 10AM at St. Mary's Catholic Church on North and Bethel Ave in Sanger, CA

Interment: Sanger District Cemetery

Okay thank you.



iMessage







Maria &gt;



Okay thank you.

Ok let me know what time is best to swing by and see them.

We're here now. Be here for a bit

Going

We are here

Thank you Maria. My sister Raquel says thank you as well.

Wednesday 1:55 PM

How much needs to be paid up front? Or how does that work?

Wednesday 10:22 PM

Hi Maria. I apologize for the late text. We will be starting a gofund me for funeral expenses. I can pay up front whatever needs to be paid. Just please let me know what the total cost is or what is needed. My mind has been everywhere. I probably should have asked that yesterday.



iMessage



7:00

5G



Maria >



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Going

We are here

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Delivered



iMessage

